

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PACCAR FINANCIAL CORP.,
a Washington corporation,

Civ. No. 6:09-cv-6371-AA

OPINION AND ORDER

Plaintiff,

v.

ALTIMETER INC., d/b/a
Altimeter Transport Services,
an Oregon corporation, ALICE
NOTE, REX NOTE (a/k/a TONY
NOTE), and MICHAEL NOTE,

Defendants.

AIKEN, Chief Judge:

Plaintiff filed suit alleging breach of lease agreements and seeking monies due. Default judgment has been entered against defendant Altimeter Inc., and plaintiff's claims against defendants Alice Note and Rex Note have been stayed due to bankruptcy proceedings involving those defendants. Plaintiff represents that Alice Note and Rex Note received discharges through bankruptcy.

Plaintiff now moves for summary judgment against Michael Note, who has appeared through counsel and filed an answer. Plaintiff maintains that Michael Note breached two Lease Guaranty agreements and has defaulted on both. To date, Michael Note has not responded to plaintiff's motion, and it is granted.

DISCUSSION

Or about November 25, 2005 and October 31, 2006, defendant Altimeter, Inc. (Altimeter) and plaintiff executed two Equipment Lease Agreements (the Lease Agreements). See Ougland Decl. Exs. A, B. Altimeter agreed, among other things, to lease from plaintiff the property described in any Schedules to be executed by Altimeter and plaintiff.

On or about November 25, 2005 and October 31, 2006, Michael Note executed Lease Guaranties and agreed to guarantee the lease payments and other obligations of Altimeter. See Ougland Decl. Exs. C, D.

Altimeter breached the Lease Agreements by failing to make payments, and on June 12, 2009 and June 15, 2009, plaintiff declared both Lease Agreements terminated. Ougland Decl. ¶ 4; see also Answer at ¶ 6 (admitting breach of Lease Agreements). Pursuant to the terms of the Lease Agreements, plaintiff sold various vehicles for \$357,700 in an attempt to recover the Lease Value. See Ougland Decl. ¶ 5. Plaintiff incurred \$5,297.52 in costs as a result of the sales and maintains that the principal amount of

lease deficiency is \$309,102.69, plus attorney fees and prejudgment interest. Ougland Decl. ¶ 5.

Plaintiff provided a Notice of Lease Deficiency to Michael Note and contends that Michael Note has breached the guaranties of by failing to make any payments toward the lease deficiency.

Michael Note has not responded to plaintiff's motion or contested plaintiff's statement of facts. I therefore find no genuine dispute as to any material fact to preclude summary judgment in favor of plaintiff. Fed R. Civ. P. 56(a). Accordingly, I find that Michael Note has breached the Lease Guaranties signed by him on November 25, 2005 and October 31, 2006 and is liable to plaintiff under the terms of those guaranties.

CONCLUSION

Plaintiff's Motion Summary Judgment (doc. 23) is GRANTED. Within fourteen days of the date of this Order, plaintiff shall submit a proposed order of Judgment with respect to the Note defendants.

IT IS SO ORDERED.

Dated this 21st day of May, 2012.



Ann Aiken
United States District Judge